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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION
CIVIL NO. CV-01-72-M-DWM**

**DEPOSITION OF HARRY ESCHENBACH
EXAMINATION DATE: SEPTEMBER 26, 2002**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**W.R. GRACE & COMPANY, W.R. GRACE &
CO.-CONN, and KOOTENAI DEVELOPMENT
CORPORATION,**

Defendants.

APPEARANCES

**KATHY BRADFORD, ESQ.
CHARLOTTE L. NEITZEL, ESQ.
WILLIAM J.A. SPARKS, ESQ.**

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PURSUANT TO NOTICE, the deposition of HARRY ESCHENBACH was taken at 9:02 a.m. on September 26, 2002, at 999 Broadway, 10th Floor, Denver, Colorado, before Margaret Melander, Registered Professional Reporter and Notary Public in and for the State of Colorado, said deposition being taken pursuant to the Federal Rules of Civil Procedure.

Margaret Melander
Registered Professional Reporter

<p>1 and did all this counting. So we had this 2 discussion, and we used discriminatory counting. 3 Later, in the mid '70s or so, NIOSH 4 started having a course, a training course, and we 5 would send our people there to learn how to count 6 asbestos fibers. Well, they'd come back and say, 7 We've got to count everything. And then we'd have 8 the discussion of, Yes, you have to count every 9 asbestos fiber, but if it's not asbestos, then you 10 don't count it.</p> <p>11 NIOSH never addressed that in their 12 discussions because they were working on counting 13 asbestos. We had a unique circumstance, and that's 14 what came about.</p> <p>15 Now, from time to time, and in my 16 previous memo that you discussed this morning, when 17 I was talking about "mutant behavior," every time 18 we would send somebody to NIOSH, they came back, 19 and we would have to go back through the same 20 retraining, rediscussion. In this period of time, 21 by the way, we learned that the -- when MSHA, are 22 you familiar with that term?</p> <p>23 Q Yes, I am.</p> <p>24 A Yeah. MSHA came in and sampled at 25 Libby. They would take their samples and evaluate</p>	<p>Page 70</p> <p>1 Q Let's see if I get this. So for 2 all the employee testing and sampling and analysis, 3 you used the discriminatory method from 1972 when 4 you brought it to the lab internal to Grace; and 5 for the user testing or the binder tests and the 6 attic tests and the drop tests and all those 7 things, you don't know what was done?</p> <p>8 A That's not quite true. For the 9 user tests, if we were comparing this to -- if we 10 were doing it to compare to the OSHA standard, we 11 would use discriminatory counting, because we were 12 looking for people exposures. We weren't looking 13 for a lab test type thing.</p> <p>14 Q Okay.</p> <p>15 A Okay? So when we were talking 16 about, What is a person's actual exposure and not 17 doing material evaluations or anything else, we 18 used counting that we believed and subsequently 19 were shown to give us accurate information.</p> <p>20 Q Then, why is it that you weren't 21 doing discriminatory counting when you were doing 22 the binder testing and things like that, also?</p> <p>23 A As I said, they may or they may not 24 have.</p> <p>25 Q Oh, I see.</p>	<p>Page 72</p>
<p>1 them with PCM, phase contrast microscopy. If a 2 sample appeared to exceed the PEL, they would redo 3 it with TEM. And we never had a citation, because 4 when they did it with TEM, they found that it was 5 well below the limit.</p> <p>6 But they didn't train their people to 7 count PCM discriminatorily because that was a 8 burden, so, consequently, we usually used 9 discriminatory counting. We always used it.</p> <p>10 Now, in some of the other -- when they 11 were doing comparison testing, you know, when we 12 discussed drop testing, I don't know, really, what 13 they did, you know, but those samples were usually 14 pretty heavy with fiber. And since it was a 15 comparison thing, I don't know precisely what they 16 did. But with respect to people exposures, we did 17 discriminatory counting always. Now --</p> <p>18 Q So for --</p> <p>19 A One more thing if I could. Julie 20 Yang, after this, finally wrote down the 21 procedure --</p> <p>22 Q Right.</p> <p>23 A -- sometime subsequent to these 24 documents, after many years of sort of passing it 25 on by word of mouth rather than documenting it.</p>	<p>Page 71</p> <p>1 A I wasn't involved in that. That 2 was a different project.</p> <p>3 Q Okay.</p> <p>4 A All right? I think, by the way, in 5 the paragraph -- the last paragraph, the second 6 No. 3 on this document, the second paragraph, they, 7 Arthur Little, in fact, sent out some of these 8 samples at one point and had them examined by 9 electron microscopy to confirm what we were doing, 10 in addition to the confirmation we had from the 11 Bureau of Mines.</p> <p>12 Q Right. Isn't that the sample that 13 came back 50 to 72 percent of the actual tremolite 14 respirable fiber?</p> <p>15 A I don't recall offhand.</p> <p>16 Q Okay.</p> <p>17 A I don't have that document, and it 18 may or may not have been, but I don't recall.</p> <p>19 Q Okay. Seal that last exhibit.</p> <p>20 (Deposition Exhibit No. 344 was marked.)</p> <p>21 Q (BY MS. BRADFORD) You've been 22 handed what's been identified as Exhibit 344. Have 23 you had an opportunity to look at that document?</p> <p>24 A Yes, I have.</p> <p>25 Q I'm asking you about this document,</p>	<p>Page 73</p>